

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Megan Ault	Team: Team # 8	CCRB Case #: 200810260	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 07/16/2008 9:10 AM	Location of Incident: 120th Precinct stationhouse	Precinct: 120	18 Mo. SOL 1/16/2010	EO SOL 1/16/2010	
Date/Time CV Reported Fri, 07/18/2008 4:59 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 07/18/2008 4:59 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Eric Dym	01800	933762	120 PCT
2. POM Derek Epstein	01318	938436	120 PCT
3. POF Nancy Heinz	13745	895355	120 PCT
4. An officer			120 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Matthew Weinstein	19780	931410	120 PCT
2. SGT Gregory Pernicone	05094	910201	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Eric Dym	Force: PO Eric Dym used physical force against § 87(2)(b)	
B.POM Derek Epstein	Force: PO Derek Epstein used physical force against § 87(2)(b)	
C.POM Eric Dym	Off. Language: PO Eric Dym made remarks to § 87(2)(b) based upon the sex and race of § 87(2)(b)	
D.POF Nancy Heinz	Discourtesy: PO Nancy Heinz spoke obscenely to § 87(2)(b)	
E.POM Derek Epstein	Discourtesy: PO Derek Epstein spoke rudely to § 87(2)(b)	
F.POF Nancy Heinz	Force: PO Nancy Heinz used physical force against § 87(2)(b)	
G.POM Eric Dym	Force: PO Eric Dym used physical force against § 87(2)(b)	
H. An officer	Discourtesy: An officer spoke obscenely to § 87(2)(b)	
I. An officer	Discourtesy: An officer acted rudely toward § 87(2)(b)	
J.POM Eric Dym	Force: Eric Dym used a chokehold against § 87(2)(b)	

Synopsis

§ 87(2)(b) filed this complaint with the CCRB via the agency's website on July 18, 2008, and also called IAB to report the incident later the same day.

On July 15, 2008, § 87(2)(b) turned herself in to the 120th Precinct stationhouse where she was arrested for assault. Around 10:00 AM on July 16, 2008, § 87(2)(b) was inside a holding cell in the 120th Precinct stationhouse. She expected that she would be transported to the courthouse that morning, but when she learned this would not take place, § 87(2)(b) became upset. She began to yell, curse, flooded her cell, and broke apart a wooden bench. Several officers, identified through investigation as PO Nancy Heinz, PO Eric Dym, PO Derek Epstein, and PO Sgt. Pernicone responded to the cell area. § 87(2)(b) alleged that PO Dym punched her in the face (**Allegation A**), and PO Epstein kned her in the nose (**Allegation B**). § 87(2)(b) stated that PO Dym referred to her as, "black bitch," "animal," and "asshole," (**Allegation C**), PO Heinz called her, "bitch" and "fucking animal," (**Allegation D**), and PO Epstein said, "She bit me, she's an animal," (**Allegation E**).

§ 87(2)(b) also alleged that all of the officers present kicked her (**Allegations F, A and B**) and that PO Dym picked her up by the waist of her jeans and dropped her on the ground (**Allegation G**). Additionally, § 87(2)(b) claimed that PO Heinz kned her in the face (**Allegation F**), PO Dym picked her up by grabbing the front of her neck (**Allegation H**), an unknown officer referred to her as a "bitch," (**Allegation I**), called her an "animal" and spat on her (**Allegation J**).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Summary of Complaint

§ 87(2)(b) appeared at the CCRB on August 11, 2008 (encl. 5F). § 87(2)(b) also made statements to medical personnel on the date of the incident, July 16, 2008 (encl. 5A). § 87(2)(b)

§ 87(2)(b) stated that some time in June she and another woman who had had an affair with her husband became involved in a physical altercation and filed complaints against each other. § 87(2)(b) was as a result arrested by Det. Aust at the 120th Precinct stationhouse on July 15, 2008. § 87(2)(b) stated that she had willingly gone to the stationhouse and her arrest took place without incident.

Around 12:00 PM on July 15, 2008, § 87(2)(b) was placed into Cell 1 in the female holding area, which is the first cell to the left. She was alone in the cell. The female holding area has 10 cells which are arranged in two 5-cell rows. The two rows are on either side of a solid wall. Women inside cells on different rows can hear but not see each other. Women in holding cells on the same row can see each other.

From the time she arrived until 3:00 PM, PO1, identified through investigation as PO Nancy Heinz, was in charge of the women in the holding cells. § 87(2)(b) described PO Heinz as a 45-year-old white female with bleached blonde hair in a pony tail, and blue eyes. She was 5'3"-5'5" tall and had a very slim build. § 87(2)(b) thought she heard the other officers calling PO Heinz "Torres." § 87(2)(b) remarked that PO Heinz did not feed the women during her tour.

Some time between 6:00 AM and 8:30 AM on July 16, 2008, the women in the holding cells became agitated because they had not been fed and did not have toilet paper or sanitary napkins. One of the

inmates, a young girl, started yelling that someone was having a seizure in an effort to get someone's attention. PO Heinz entered the holding cell area. The prisoners asked her when they could eat, and when they would be given toilet paper and sanitary napkins. PO Heinz stated, "Stop playing games, who's sick?" No one said anything. PO Heinz stated that because they had lied none of them were going to court. She pointed at § 87(2)(b) and said, "Especially you." § 87(2)(b) stated that she was scheduled to appear before a judge that day. § 87(2)(b) did not know why the officer singled her out. She stated that she had behaved well the night before.

At 8:30 AM a bus arrived to transport the women to the Staten Island court building. PO Heinz did not place § 87(2)(b) on the bus, stating that she was not ready to go. § 87(2)(b) became upset as a result and started yelling, "I didn't fake a seizure, you let the girl who did onto the bus." § 87(2)(b) continued yelling and banged against the bars of the cell. She requested to speak with a sergeant and said repeatedly, "I am § 87(2)(b)." She also said, "You white bitch, I don't know why you're doing this." § 87(2)(b) then began flushing the toilet in her cell repeatedly, causing the water to overflow. The bench in her holding cell became wet and broke in half. Another prisoner named § 87(2)(b) told § 87(2)(b) that she was not behaving appropriately and that she should be quiet. § 87(2)(b) was in Cell 6, which was on the other side of the wall from Cell 1. § 87(2)(b) could hear § 87(2)(b) but could not see her. § 87(2)(b) then calmed down and sat quietly in her cell.

Ten to fifteen minutes after she had calmed down, PO Heinz entered with two additional officers: PO Dym and PO Epstein. § 87(2)(b) noted these officers' names from their shields. § 87(2)(b)

PO Dym and PO Epstein asked § 87(2)(b) what was wrong, and she responded that PO Heinz had not been treating them well. PO Heinz stopped § 87(2)(b) from talking and said that she was a "trouble maker." PO Dym entered the cell and placed a cuff on § 87(2)(b)'s right wrist. At PO Heinz's dereliction, PO Dym started to handcuff § 87(2)(b) to the wall of the holding cell so that her arms were restrained above her head. § 87(2)(b) told PO Dym that she didn't think he should restrain her like that since she would not be able to sit down, move around, or use the toilet. PO Dym grabbed § 87(2)(b) by the back of the neck and pushed her torso forward and down. PO Dym held § 87(2)(b)'s right wrist while the other officers tried to grab her left arm. § 87(2)(b) said, "What are you doing? This is not right," and lifted her head up. PO Dym then punched § 87(2)(b) just under her left eye (**Allegation A**). In response, § 87(2)(b) reached out and grabbed the crotch of PO Dym's pants. She stated that she was unable to grab his genitals through his clothing, and, "only felt a tip." § 87(2)(b) was standing on her feet and bent over at the waist. PO Epstein kneed her in the nose with his leg (**Allegation B**). § 87(2)(b) bit PO Epstein's left thigh in response. The struggle lasted for about two minutes before one of the officers succeeded in placing § 87(2)(b) in handcuffs.

All of the officers were cursing at this point. She remembered PO Dym referring to her as, "black bitch," "animal," and "asshole," (**Allegations C**) PO Heinz called her "bitch," and "fucking animal," (**Allegation D**). § 87(2)(b) was lying flat on her stomach just outside of her holding cell. Another officer, PO Weinstein, approached her and the other officers. § 87(2)(b)

§ 87(2)(b) noted PO Weinstein's name from his shield. PO Epstein said, "She bit me, she's an animal," (**Allegation E**).

All four of the officers began kicking and punching her in the back and in her side (**Allegations F, A, and B**). She specifically remembered being kicked in her right midsection, and punched in the center of her back. She could not say specifically which officer did what. PO Dym picked her up by the belt loop of her jeans. The belt loop broke and she fell to the floor. PO Dym again picked her up by the waist of her pants and dropped her to the ground (**Allegation G**). PO Heinz kneed § 87(2)(b) in the face (**Allegation F**). PO Weinstein and PO Epstein grabbed her legs and lifted them off the floor. PO Dym lifted § 87(2)(b)'s upper body by grabbing her hair and the front of her neck (**Allegation H**). § 87(2)(b) was wearing a wig which came off, and PO Dym grabbed her real hair. § 87(2)(b) could breathe "a little" and had trouble speaking while the officer grabbed her.

The officers carried her into a room adjacent to the holding area which is used to search prisoners. PO Heinz locked the door and stood off to the side. § 87(2)(b) had been wearing a t-shirt over a negligee top with a built in bra. During the struggle, the t-shirt had been torn off of her and the negligee underneath had shifted downward, so that her breasts were exposed. She could not describe how this took place.

§ 87(2)(b) was lying face-down on the floor. She told the officers that she intended to report the incident to IAB. The officers responded that they would tell IAB that she had insulted their sexual preference by calling them gay. They also said that they were marines. § 87(2)(b) said, “Hoo-rah.” She explained to the investigator that she saw Samuel L. Jackson say this in *The Negotiator* when he wanted to calm down a marine. The officers, § 87(2)(b) could not remember which one in particular, said, “Say it right, bitch, it’s Hoo-ha,” (**Allegation I**). § 87(2)(b) stated that PO Weinstein pressed his foot into the left side of her face. PO Weinstein spit into her face and called her an “animal,” (**Allegation J**). Because of the flood she had caused, PO Weinstein’s pants were wet and dirty. PO Weinstein wiped the dirt off his pants, causing dirt to go flying into § 87(2)(b)’s hair and face. An ambulance arrived soon after and transported her to the hospital.

According to § 87(2)(b)’s medical records, she informed FDNY paramedics that she had been “beaten up by the police officers who came into her cell.” § 87(2)(b) stated, “They kicked and punched me!” At § 87(2)(b), § 87(2)(b) informed the physician that she was being transferred to court when she became agitated with the matron and other officers became involved. She stated that while she was being handcuffed she began to resist and she was pushed to the ground. She complained of scratch marks to her arms and face and stated that she had swelling on the right side of her face.

§ 87(2)(b) stated during her CCRB interview that she was taken to § 87(2)(b) on Staten Island. She was there from 11:00 AM until 1:30 PM. At 1:30 PM § 87(2)(b) refused medical treatment and returned to the stationhouse.

When she arrived at the stationhouse, the desk sergeant asked if she was § 87(2)(b) and announced that she was needed in court. PO Dym, PO Epstein, and PO Weinstein all gathered around the sergeant and spoke for several minutes. The desk sergeant then announced that § 87(2)(b) would be going to a psychiatric hospital for an evaluation. § 87(2)(b) told the sergeant that she was fine and would go for psychiatric help once she was released. The sergeant insisted that she go.

§ 87(2)(b) was then transported to § 87(2)(b), where she is now a regular patient. The following morning PO Osborn and PO Zimbrowski from the 120th Precinct stationhouse escorted her to the court house. These officers told her that she didn’t need a police escort and that the situation was ridiculous.

As a result of this incident, § 87(2)(b) had a black right eye, a bruise on her left side, scrapes on the left side of her face, swelling along the rear base of her neck, and cuts and swelling on her right arm from the handcuffs. She also had a cut on her left leg, just below the kneecap. § 87(2)(b) has not sought any further medical treatment for these injuries. She provided the investigation with photographs of her injuries which she took on July 18, 2008 (encl. 5M).

Results of Investigation

Attempts to Contact Witnesses

§ 87(2)(b) provided the telephone number of § 87(2)(b) who was a prisoner in the female holding cell area when the incident occurred. § 87(2)(b) informed the CCRB that she was unwilling to make a statement or cooperate with the investigation. The investigation attempted to contact the other women listed on the female holding pen roster through LexisNexis searches, and Verizon subpoenas, but they were either unavailable or uncooperative with these efforts.

Officer Statement: PO Nancy Heinz

PO Nancy Heinz appeared at the CCRB on October 28, 2008. § 87(2)(b) On July 16, 2008, PO Heinz worked as the female cell attendant in the 120th Precinct stationhouse from 7:05 AM until 3:40 PM, and was dressed in uniform. PO Heinz does not maintain a memo book as she works exclusively as the female cell attendant and maintains the prisoner holding pen roster.

Female Prisoner Holding Pen Roster (encl. 6A)

§ 87(2)(b) was admitted to the 120th Precinct's holding cell area at 11:38 AM on July 15, 2008. She was described as combative upon arrival. The roster for July 16, 2008 includes an instruction to keep § 87(2)(b) alone. ESU removed § 87(2)(b) at 11:05 AM. She is again described as "combative" and also is listed as "EDP."

CCRB Statement (encl. 6E)

On July 15, 2008, PO Heinz worked as the female cell attendant in the morning and early afternoon. The female holding cells are located on an upper floor of the 120th Precinct stationhouse. § 87(2)(b) was placed in one of the cells between 11:00 AM and 12:00 PM on that date. § 87(2)(b) she seemed to be in a good mood and caused no problems.

The following morning, PO Heinz arrived at the stationhouse at 7:05 AM and shortly after checked on the female prisoners. § 87(2)(b) asked her what time the bus would come to transport them to central booking, and she responded that it would arrive at 10:30 AM. § 87(2)(b) said, "Oh hell no, I'm going to court, I'm supposed to be at court at 9 o'clock, you fucking bitch. I want to get out of here." § 87(2)(b) also started yelling and chanting about Al Sharpton and Sean Bell, and said, "That fucking white bitch, who does she think she is? I was supposed to go to court at 9 o'clock."

PO Heinz left the holding cell area, and went to her desk, which is in a separate room adjacent to the holding cells. § 87(2)(b) continued "carrying on" verbally for 60-90 minutes before she flooded her holding cell and the surrounding area by repeatedly flushing the toilet. § 87(2)(b) continued screaming and using profanity. PO Heinz shut off the water in the cells to prevent further flooding, and went downstairs to notify the desk sergeant of what was happening.

§ 87(2)(b) proceeded to break the seat of the wooden bench in her holding cell by hammering it with her fist. Around 10:00 AM, PO Heinz again informed the desk sergeant of what was taking place, and he stated that he would call emergency services to transport her to the hospital and told PO Heinz to handcuff § 87(2)(b) so that she could not hurt herself or anyone else.

PO Epstein returned upstairs with PO Heinz. PO Heinz was unsure if there was an auxiliary police officer with them. PO Heinz intended to handcuff one of § 87(2)(b)'s hands to the wall of her holding cell so that she would not be able to hurt herself or anyone else with the pieces of broken wood which were now strewn about her cell. PO Epstein and PO Heinz approached the cell and opened the door. At first § 87(2)(b) appeared to think she was being taken to court, but then noticed that the officers were holding their handcuffs, and went "berserk." PO Heinz and PO Epstein told § 87(2)(b) that they were going to handcuff her. § 87(2)(b) said that they would not handcuff her, and called PO Heinz a "fucking white bitch."

PO Heinz and PO Epstein tried to grab her wrists to handcuff her, but § 87(2)(b) would not hold still and kept turning around. PO Epstein placed his hand on her back and pushed it forward so that she was standing bent over at the waist. PO Epstein was standing at her side trying to get her hands behind her back when § 87(2)(b) turned her head and bit his penis twice through his clothes. PO Heinz did not know if § 87(2)(b) broke his skin. PO Epstein cried out in pain. PO Heinz, who was standing behind § 87(2)(b) grabbed her by the shoulder and pulled her away from PO Epstein.

PO Epstein, § 87(2)(b) and PO Heinz were still inside her cell at this point. The auxiliary police officer was watching from outside the cell, and activated the alarm. PO Heinz and PO Epstein continued

trying to handcuff her, but they were unable because § 87(2)(b) was kicking at the officers and flailing her arms.

PO Dym and Sgt. Pernicone came in response to the alarm. § 87(2)(b) and the officers were in the walkway outside her cell at this point. Sgt. Pernicone said, "Calm down. ESU is coming, we're going to get you out of here." PO Dym and Sgt. Pernicone helped PO Heinz and PO Epstein place § 87(2)(b) on the floor by pushing on her back and grabbing her arms and PO Dym finished placing her in handcuffs. The officers lifted § 87(2)(b) and brought her into PO Heinz's office, a separate room next to the holding cells. § 87(2)(b)'s nightgown had shifted down during the struggle to reveal her breasts. Once she was restrained, the male officers left the room and PO Heinz remained with § 87(2)(b) while they waited for the ambulance to arrive. She did not readjust § 87(2)(b)'s clothing because she did not want PO Heinz to touch her.

ESU responded and escorted § 87(2)(b) to the hospital. She had calmed down by the time they arrived.

PO Heinz noted that § 87(2)(b) sustained a bruise on her face during the incident. She was not certain exactly how this occurred but stated that she had been moving and squirming around while they were trying to handcuff her and may have hit her head against the floor or the wall of her cell at some point. PO Heinz did not believe that PO Epstein sought medical treatment for the bite; she said that he was very embarrassed by the situation. PO Heinz sustained several scratches to her hands while attempting to restrain § 87(2)(b).

PO Heinz stated that besides pulling her arms behind her back, and trying to push to the ground, the officers did not use any other physical force against § 87(2)(b). Neither she nor the other officers punched, kneed, kicked, or struck § 87(2)(b) in any way. None of the officers used any profanity during the incident, nor did anyone refer to § 87(2)(b) as an "asshole," "animal," or a "black bitch." PO Heinz stated that § 87(2)(b) was never picked up and then dropped onto the floor, and that none of the officers grabbed her neck or placed her in a chokehold. No officer spit on § 87(2)(b) during the incident. In addition, PO Weinstein was not involved in this incident.

Officer Statement: PO Eric Dym

PO Eric Dym appeared at the CCRB on October 29, 2008. § 87(2)(b). On July 16, 2008, he worked from 7:05 AM until 3:40 PM as the assistant desk officer in the 120th Precinct stationhouse and was in uniform.

Memo Book (encl. 7A)

PO Dym had the following entries in his memo book regarding the incident:
"1030 Female cell alarm activated for help. 1130: EDP transported to § 87(2)(b) w/ assistance of ESU. EDP did bite PO Epstein 2x to right inner thigh to prevent being handcuffed."

CCRB Statement (encl. 7C)

On July 16 2008, PO Dym was working as the assistant desk officer on the lower level of the 120th Precinct stationhouse. Around 10:30 AM he heard the female cell alarm go off. He safeguarded his gun belt and ran up two flights of stairs to the female holding cells. When he arrived PO Nancy Heinz and PO Derek Epstein were attempting to place § 87(2)(b) in handcuffs by pulling her arms behind her back. § 87(2)(b) was on the ground outside of her holding cell, and was kicking, punching, and attempting to bite the officers. PO Dym did not believe that an auxiliary police officer was present, nor did he remember anyone else coming to the female holding cell area. PO Epstein told PO Dym to be careful because § 87(2)(b) had already bit him twice on his thigh. § 87(2)(b) yelled, "I'll bite you too. I tried to bite him in the balls."

PO Dym told PO Epstein to step aside and helped PO Heinz to pull § 87(2)(b)'s arms behind her back. § 87(2)(b) was lying on the ground on her back and PO Dym was trying to roll her onto her stomach. § 87(2)(b) continued trying to kick, bite, and punch the officers, which made this very difficult. She also yelled, "I fucking hate you. I tried to bite his fucking balls off. I'll bite your fucking balls off."

Someone gave PO Dym handcuffs and he was able to place § 87(2)(b) in them. § 87(2)(b) was at this point sitting or lying on the floor outside her holding cell. She continued “flopping around” and banging her head and arms against the ground and a nearby wall. The officers tried to place her in a comfortable position on the floor, but every time they did so she attempted to bite them. PO Dym waited with § 87(2)(b) until emergency services arrived and transported her to a hospital. He did not remember if she was placed in a different room or not.

Besides restraining her and pulling her arms behind her back, PO Dym used no other force against § 87(2)(b). He also stated that this was the extent of the physical force the other officers involved used against her. PO Dym stated that neither he nor any other officer punched, kicked, kneed, or otherwise struck § 87(2)(b). Neither he nor any other officer used profanity or obscene language when speaking with § 87(2)(b). In particular, no one referred to her as a “black bitch,” “asshole,” or a “fucking animal.” No officer, including himself, grabbed § 87(2)(b)’s neck or spit on her, and no one picked her up and dropped her. PO Dym did not know how long the disturbance went on before the alarm sounded. He did not believe that PO Epstein sought medical treatment as a result of the incident.

Officer Statement: PO Epstein

PO Epstein was interviewed at the CCRB on November 18, 2008. § 87(2)(b) On July 16, 2008, PO Epstein worked from 7:05 AM until 3:40 PM as the male cell attendant, and was dressed in uniform.

Memo Book (encl. 8A)

PO Epstein had the following entries in his memo book regarding this incident:

“1025: Asked to handcuff female prisoner in female cells. She was destructive to department property kicking screaming being an overall EDP. When trying to be placed under restrained with cuffs female started to struggle and swung fists at face when cuff was applied. While second was being applied perp did bite twice to inner thigh and around testicles.

1030: 85 called to restrain female.”

CCRB Statement (encl. 8C)

On July 16, 2008, PO Epstein was working as the male cell attendant. Around 10:25 AM PO Nancy Heinz, the female cell attendant, approached him and requested his help in restraining a female prisoner. She stated that the prisoner, § 87(2)(b) was trying to flood the cells, would not stop screaming, and was banging her head against the wall. PO Epstein and PO Heinz went upstairs and he witnessed § 87(2)(b) banging her head against the wall of her cell, and trying to break apart the bench in her cell. PO Epstein believed he and PO Heinz were the only police officers present at that time; he stated it was possible that an auxiliary police officer was present, but he was uncertain.

PO Epstein approached § 87(2)(b) and bent her forward at the waist while he pulled her arm behind her back. He explained that this is a tactical maneuver taught in the academy. § 87(2)(b) then bit him twice through his pants in the area around his testicles. PO Heinz activated the alarm, and PO Dym responded to the location. PO Epstein believed that PO Dym was the only additional officer who responded. PO Epstein and PO Dym grabbed § 87(2)(b)’s arms and they pushed her so that she was lying facedown on the ground. PO Dym and PO Epstein then placed her in handcuffs. During this process, § 87(2)(b) threw punches at the officers, kicked, and was screaming and cursing. She made a comment about PO Epstein being Jewish, threatened that they would lose their jobs, and told PO Epstein that she would, “bite him in the balls again.” She also stated, “You’re not fucking cuffing me.”

Once she was handcuffed PO Epstein and PO Heinz lifted her by the arms and legs and carried her to the waiting area next to the cell area, where PO Heinz’s desk is. PO Epstein left the area to make sure § 87(2)(b) had not broken his skin when she bit him. He was not present when EMS or emergency services arrived. He did not fill out a line of duty form, nor did he have any open wound as a result of the incident.

PO Epstein did not notice any injuries on § 87(2)(b). Besides the physical force described above, PO Epstein stated that no additional force was used against her. He stated that either he nor any other officer punched, kicked or struck § 87(2)(b). PO Dym did not use any profanity during the incident, nor did

he refer to § 87(2)(b) as a “black bitch,” “fucking animal,” or anything along those lines. PO Dym stated that no other officer used profanity or used that language in reference to § 87(2)(b) either. No officer grabbed her neck, or spit on her. The officers picked her up as described above, but did not drop her.

Officer Statement: Sgt. Pernicone

Sgt. Pernicone appeared at the CCRB on March 16, 2009. § 87(2)(b)

On July 16, 2008, Sgt. Pernicone worked from 6:55 AM until 3:52 PM. He was working as the housing sergeant with PO Brassil. He was in uniform and assigned to marked RMP #§ 87(2)(b). He had no entries in his memo book regarding this incident.

CCRB Statement (encl. 9C)

Sgt. Pernicone stated that on the date and time of the incident, he entered the stationhouse’s rear door alone and witnessed a female prisoner identified by the investigation as § 87(2)(b) struggling with several officers in the muster room. The muster room is a waiting room adjacent to the main desk on the building’s first floor. He did not believe they were in the female holding cell area. Sgt. Pernicone remembered PO Heinz and PO Epstein being present; he could not remember any other officers who were involved. § 87(2)(b) was in handcuffs at the time, and was struggling to get away from the officers. She was kicking them, screaming, and behaving “irrationally.” Sgt. Pernicone did not remember if § 87(2)(b) was standing or sitting. The officers used the “minimal physical force” in order to restrain § 87(2)(b). He was unable to describe specifically what this consisted of. He watched from the doorway of the room to make sure she did not break free until they succeeded in restraining her; this took a very short amount of time and stated that everything happened very quickly. Once they had gotten § 87(2)(b) under control and she had stopped kicking the officers, Sgt. Pernicone left. He had no physical contact with § 87(2)(b) and only watched the incident.

Sgt. Pernicone remembered PO Epstein saying that he had been kicked or hit in the testicles. He was not present when emergency services or an ambulance arrived for § 87(2)(b). He did not remember her having any injuries and did not notice a black eye, or any bruises or scrapes on her face or body. Sgt. Pernicone stated that neither he nor any other officer within his sight punched, hit, kneed, or struck § 87(2)(b) in any way. Neither he nor any other officer grabbed her by the neck, spit on her, or referred to her in a derogatory manner such as “black bitch,” “fucking animal,” or “asshole.”

Officer Statement: PO Weinstein

PO Weinstein appeared at the CCRB on October 30, 2008. § 87(2)(b)

On July 16, 2008, PO Weinstein worked from 7:05 AM until 3:40 PM. He was in uniform and his original assignment was intake officer. He did not have any entries in his memo book regarding this incident.

CCRB Statement (encl. 10C)

PO Weinstein did not have any recollection of this incident. He stated that some time around 7:30 or 8:00 AM, he was assigned to transport his partner to the hospital where he was scheduled to have surgery on his ankle. PO Weinstein stated that as a result of this assignment, he was not present in the stationhouse during the morning of July 16, 2008. He did not have any contact with any of the female prisoners on that day, nor did he interact with any emotionally disturbed females in the stationhouse, or witness any such interaction.

Medical Records

Ambulance Call Report (encl. 11A)

The ACR indicates that paramedics evaluated § 87(2)(b) shortly after 10:59 AM on July 16, 2008. The report states that § 87(2)(b) was found sitting at the location. She did not have neck or back pain, nor was she nauseous. She had swelling and redness on her right and left cheeks.

§ 87(2)(b) (encl. 11C)

Hospital records from § 87(2)(b) indicate that § 87(2)(b)'s chief complaint was pain to her right arm and face. An abrasion was noted on the right side of her face. She was diagnosed with contusions and abrasions. § 87(2)(b) refused further medical treatment and left against medical advice before personnel had finished evaluating her.

§ 87(2)(b) was evaluated at § 87(2)(b) on § 87(2)(b). Her chief complaint was that she was "very depressed." The report indicates that she has a history of post traumatic stress disorder.

Communications Records

SPRINT (encl. 12A)

The SPRINT indicates that at 10:57 AM on July 16, 2008, EMS were requested at the 120th Precinct's stationhouse for an emotionally disturbed prisoner. No emergency services unit was needed at that time. At 11:07 AM a sergeant from the 120th Precinct requested emergency services at the location for the aforementioned prisoner. An ambulance arrived at the scene at 11:08 AM, and the request for ESU was disregarded at 11:25 AM. Unit A escorted EMS to § 87(2)(b) at 11:31 AM.

Police Department Documents

Arrest Report (encl. 13C)

Arrest § 87(2)(b) notes that Det. Jeffrey Aust arrested § 87(2)(b) at 10:30 AM on July 15, 2008, inside § 87(2)(b). § 87(2)(b) was charged with menacing in the second degree, assault, and criminal possession of a weapon.

Complaint Report (encl. 13A)

Complaint Report § 87(2)(b) states that on June 21, 2008, at 2:10 PM § 87(2)(b) threw an unknown liquid in the face of § 87(2)(b) and threatened her with a knife.

Medical Treatment of Prisoner Report (encl. 16A)

The report was completed at 3:00 PM on July 16, 2008. It states that "prisoner complains of cuts and abrasions to her face, hands, and legs. Prisoner transported to § 87(2)(b) for evaluation. Prisoner was medically cleared and evaluated."

Roll Call (encl. 17A)

The 120th Precinct's Tour 2 Roll Call for July 16, 2008, lists PO Epstein as the male cell attendant, PO Dym as the assistant desk officer, and PO Heinz as the female cell attendant. Sgt. Pernicone was working as the housing sergeant.

Auxiliary Police Officer Roll Call (encl. 15A)

The Auxiliary Police Officer roll call for July 16, 2008, indicates that no auxiliary police officers signed in until 11:00 AM.

Legal and CCRB Histories

§ 87(2)(b)

Officer Histories (encl. 1A)

The CCRB has never substantiated an allegation of misconduct against PO Dym, PO Epstein, or PO Heinz.

Notice of Claim Inquiry

As of April 30, 2009, no notice of claim related to this incident had been filed with the comptroller's office.

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) alleged that PO Dym punched her (**Allegation A**), spoke offensively toward her (**Allegation C**), kicked her (**Allegation A**), picked her up and dropped her (**Allegation G**), and grabbed her neck (**Allegation H**). She identified PO Dym by his name, which she noticed on his shield, provided a description of him consistent with his actual appearance, and correctly identified him as the male officer present whom she did not bite. PO Dym acknowledged interacting with and attempting to restrain § 87(2)(b) on the date in question. Allegations A, C, H, I and K are therefore pleaded against Eric Dym.

§ 87(2)(b) alleged that PO Epstein kneed her (**Allegation B**), spoke discourteously (**Allegation E**), and kicked her (**Allegation B**). She identified PO Epstein by his name, which she noted from his shield during the incident, and provided an accurate physical description of him. She also correctly identified PO Epstein as the officer whom she bit in the thigh area. PO Epstein acknowledged interacting with § 87(2)(b) during the incident in question. Allegations B, E and G are therefore pleaded against PO Epstein.

§ 87(2)(b) alleged that PO Nancy Heinz spoke discourteously toward her (**Allegation D**), kicked her (**Allegation F**), and kneed her (**Allegation F**). § 87(2)(b) provided an accurate description of PO Heinz, and identified her as the officer assigned to attend the female holding cells that morning, which was PO Heinz's assignment. PO Heinz was the only female officer involved in this incident, and acknowledged her interaction with § 87(2)(b). As a result, Allegations D, F, and J are pleaded against PO Nancy Heinz.

§ 87(2)(b) alleged that an officer referred to her as a "bitch" (**Allegation I**). She could not remember which of the officers made this comment. The investigation was as a result unable to identify this officer. Allegation L is therefore pleaded against "An officer" from the 120th Precinct.

§ 87(2)(b) alleged that an officer named "Weinstein" who wore a light blue uniform spoke and behaved in a discourteous manner toward her (**Allegation J**). PO Matthew Weinstein, who is assigned to the 120th Precinct, was on duty at the time of the incident. However, based on his testimony, the other officers' testimonies, and § 87(2)(b)'s description of his uniform, the investigation has determined that PO Matthew Weinstein was not present during the incident. The investigation explored the possibility that an auxiliary police officer was present, however none were present for duty until 11:00 AM that morning, at which point the incident was already coming to a close. Therefore, Allegation M is pleaded against "An officer" from the 120th Precinct.

Undisputed Facts

It is undisputed that § 87(2)(b) became upset while inside a holding cell in the 120th Precinct, spoke obscenely, flooded her toilet, and broke the bench in her cell. It is undisputed that she was physically combative with the officers. It is undisputed that § 87(2)(b) bit PO Weinstein in the thigh or groin area. It is undisputed that officers placed her facedown on the ground and that § 87(2)(b) struggled when they did so. It is undisputed that she was removed to the hospital.

§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

Allegation A: PO Dym used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Dym punched and kicked her. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) The extent of § 87(2)(b)'s injuries were relatively minor. She had an abrasion on her cheek, and some swelling and bruising on her face. Such injuries can be expected when a person is lying face down on the floor and actively fighting against officers' efforts to place him or her in handcuffs. § 87(2)(b), § 87(2)(g)

Allegation B: PO Epstein used physical force against § 87(2)(b)

§ 87(2)(b) claimed that PO Epstein kneed her in the nose. Because § 87(2)(b) sustained no injury to her nose, § 87(2)(b), § 87(2)(g)

§ 87(2)(b) also stated that all of the officers present, including PO Epstein, kicked her in the torso. § 87(2)(b), § 87(2)(g)

Allegation C: PO Dym spoke offensively to § 87(2)(b)

§ 87(2)(b) alleged that PO Dym referred to her as, "black bitch," "asshole," and "animal." § 87(2)(b), § 87(2)(g)

Allegation D: PO Heinz spoke obscenely to § 87(2)(b)

§ 87(2)(b) alleged that PO Heinz referred to her as a "bitch," and a "fucking animal." As discussed § 87(2)(b), § 87(2)(g)

Allegation E: PO Epstein spoke rudely in reference to § 87(2)(b)

§ 87(2)(b) alleged that PO Epstein said, "She bit me, she's an animal." § 87(2)(b), § 87(2)(g)

Allegation F: PO Heinz used physical force against § 87(2)(b)

§ 87(2)(b) alleged PO Heinz kicked her in her back and side and kneed her in the face. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation G: PO Dym dropped § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation H: PO Dym placed § 87(2)(b) **in a chokehold.**

§ 87(2)(b) claimed that PO Dym picked her off the ground by grabbing her hair and the front of her neck. § 87(2)(b), § 87(2)(g)

Allegation I: An officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that an officer referred to her as a “bitch.” She could not remember who made this comment. § 87(2)(b), § 87(2)(g)

Allegation J: An officer acted rudely toward § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: